

Fisheries (Sustainability of Molluscs and Black Jewfish) Amendment Regulation 2019

Explanatory Notes for SL 2019 No. 61

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Sustainability of Molluscs and Black Jewfish) Amendment Regulation 2019

Authorising law

Sections 223 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

Black jewfish

The policy objectives of the amendment regulation in relation to black jewfish are to address sustainability concerns for the species and to reduce the potential for black marketing of the fishery resource.

Black jewfish are a species of fish vulnerable to overfishing due to their large size; valuable swim bladders; and predictable aggregations. There is concern about the sustainability of black jewfish given the significant increase in catch over the past 12 – 18 months. The high value of black jewfish swim bladders (between \$500 and \$900 per kg) has provided commercial fishers with a strong incentive to increase the amount of fishing pressure directed at this species. Anecdotal reports suggest that the value of this species is also providing some recreational fishers with a sufficient incentive to target the species with the intent of gaining financial benefit from the illegal sale of their catches on the black market.

The 2017 commercial catch of black jewfish on the East coast rose significantly from an annual average over the past 30 years of 16 tonnes to 46 tonnes. The commercial reported catch of black jewfish for the 2018 season is still being calculated; however, it is expected to reach over 140 tonnes. Similar trends are expected for the recreational sector. There are numerous examples in other jurisdictions that demonstrate that stocks of black jewfish can collapse quickly if overfished.

The provisions of the *Fisheries Regulation 2008* (the Regulation) prior to this amendment did not restrict the commercial harvest of black jewfish and, as such, the species could have potentially been subjected to unsustainable levels of fishing pressure. The provisions also allowed commercial fishers to 'gill and gut' black jewfish at sea. This made identification of the species more difficult and increased the potential for black marketing. Given the recent boom in the market for black jewfish, the previous recreational possession limit of two fish per person could also have resulted in unsustainable fishing pressure driven by the potential for black marketing.

Gastropods and bivalve molluscs

The policy objective of the amendment regulation in relation to gastropods and bivalve molluscs is to address sustainability concerns for these fish in Moreton Bay.

Gastropods and bivalve mollusc species are highly susceptible to localised depletion because of their sedentary nature and the ease of access to fishing grounds adjacent to urban centres. A recreational fisher could take and possess up to 50 gastropods or bivalve molluscs (or a combination of these). The prohibitions on taking and possessing gastropods and bivalve molluscs in the Moreton Bay region only applied to the Wynnum (gastropod area), Nudgee Beach, Bramble Bay and Deception Bay regulated waters.

Fishing pressure directed at gastropods and bivalve molluscs has increased significantly in recent years, particularly in the Moreton Bay region, resulting in concern about the sustainability of key species, particularly mud ark, mud whelks and cockles. Evidence demonstrated there was poor compliance with the possession limit despite ongoing compliance activities and education, and the Department of Agriculture and Fisheries anticipates that fishing pressure and demand for gastropods and bivalve molluscs will continue.

A related policy objective is to allow collection of gastropod and bivalve mollusc shells in Moreton Bay to continue, provided the shells are empty and are not being taken for trade or commerce.

Achievement of policy objectives

Black jewfish

The amendment regulation reduces the risk of black jewfish becoming overfished by amending Schedule 2, part 2 of the Regulation to prescribe:

- that black jewfish must be possessed on a boat in whole form only in order to prevent processing of the fish at sea to remove the valuable swim bladders;
- a commercial catch limit for black jewfish in Gulf of Carpentaria waters in a calendar year of 6 tonnes, with commercial fishers not permitted to take or possess black jewfish once this limit is reached (previously there was no limit);
- a commercial catch limit for black jewfish in waters other than the Gulf of Carpentaria waters in a calendar year of 20 tonnes, with commercial fishers not permitted to take or possess black jewfish once this limit is reached (previously there was no limit);
- a take and possession limit of black jewfish by recreational fishers of 1 fish (which is a reduction from the existing limit of two).

The amendment regulation provides, in the definition of 'prescribed commercial catch' in Schedule 11 of the Regulation as it applies to black jewfish, that for the 2019 season, the prescribed commercial catch for black jewfish only includes catch taken after the commencement of the black jewfish provisions in the amendment regulation.

Gastropods and bivalve molluscs

The amendment regulation reduces the risk of gastropods and bivalve molluscs becoming overfished by replacing the existing management arrangements with a regulated fish declaration in Schedule 2 of the Regulation. The declaration prohibits the taking of gastropods and bivalve molluscs (excluding pipis) in all of the Moreton Bay Marine Park. Pipis are intentionally excluded from the prohibition on the taking of bivalve molluscs because pipis are generally only found on ocean beaches and are an important recreational fishing bait species and, currently, there is no concern for their sustainability.

The amendment regulation still allows the collection of gastropod and bivalve mollusc shells, by replacing the existing exception in section 175 of the Regulation with a provision which allows a person to take or possess an empty gastropod or mollusc shell provided the shell was not taken for trade or commerce.

Minor amendments to Schedule 6, part 5 of the Regulation will also be made to insert the scientific names of gastropods, bivalve molluscs and pipis.

These measures will protect current gastropod and bivalve mollusc populations and support rebuilding of populations to more sustainable levels.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

The amendment regulation is not inconsistent with the policy objectives of any other legislation.

Benefits and costs of implementation

The amendment regulation will ensure that both black jewfish and gastropods and bivalve mollusc populations can rebuild to sustainable levels and that overfishing of these fisheries resources is prevented.

Implementation of the new management arrangements for black jewfish will require commercial fishers to report through Fisheries Queensland's Automated Integrated Voice Response (AIVR) system, and for catches to be monitored against the prescribed commercial catch for the waters. Commercial fishers will incur costs making calls to the AIVR system to report their catches whilst the Department of Agriculture and Fisheries will incur costs monitoring the catches.

The biggest cost to industry of implementing the catch limits for black jewfish will be the lost income opportunity for commercial fishers, which is anticipated to be approximately

\$360,000 p.a. based on the 2017 commercial catch tonnage (and assuming the price of black jewfish does not change).

However, it is unlikely that the 2017 catch levels are sustainable, so this short-term loss in income is offset by the long-term availability of fish to sustainably supply the market into the future.

Both black jewfish and gastropod and bivalve mollusc management changes will require targeted compliance and extension efforts which will be carried out within existing resource allocations.

Consistency with fundamental legislative principles

This amendment regulation potentially breaches a fundamental legislative principle under section 4(3)(g) of the *Legislative Standards Act 1992* because it affects rights and liberties.

The imposition of a prescribed commercial catch for black jewfish affects the rights of commercial fishers by placing limits on the amount of black jewfish that may be caught and possessed each calendar year. If commercial catches continue to increase at the current rate, black jewfish will become overfished and the population will become unsustainable and may not recover. Continued pressure on the species may also result in extraordinary price drivers that make the capture of even one fish economically viable. The new limits imposed prevent commercial fishers from taking any black jewfish once the prescribed commercial catch limit of six tonnes in Gulf of Carpentaria waters and 20 tonnes in other waters is reached. The reasonable limits of 6 tonnes and 20 tonnes were selected, having regard to the annual average catch of 16 tonnes for the previous 30 years prior to 2017.

The rights of recreational fishers are also affected because their take and possession limit has been reduced from two black jewfish to one. Failing to decrease this limit allows fishers to keep a quantity of fish that may facilitate black marketing, given that recreationally caught fish can be illegally transferred into the commercial sector relatively easily, and this increases the incentive to take and possess the fish.

Implementing this amendment regulation is necessary to reduce the risk of the black jewfish becoming overfished and to ensure that the black jewfish population remains sustainable into the future.

Similarly, the prohibition on the taking of gastropods and bivalve molluscs will affect the rights of recreational fishers in the Moreton Bay Marine Park. In the past, possession limits for shellfish have not proved to be an adequate tool to manage the sustainability of gastropods and bivalve molluscs. This is due largely to the sheer number of people involved in organised fishing that is being directed at these species, often in relatively small areas and, as these areas become fished out, fishing pressure in adjacent areas is increasing. The populations of gastropods and bivalve molluscs are fragile, and these amendments prohibiting the taking of gastropods and bivalve molluscs in the Moreton Bay Marine Park are necessary to ensure that the capacity of these species to recover is not impeded.

Consultation

Stakeholder consultation regarding both the black jewfish and gastropod and bivalve molluscs occurred in mid-late 2018. Stakeholders from commercial, recreational, charter, Aboriginal and Torres Strait Islander, seafood marketing and conservation sectors, and the general public were contacted and encouraged to provide feedback. Consultation included the establishment of the 'East Coast Inshore Working Group' which was consulted on issues relating to the black jewfish and the 'Moreton Bay Working Group' for issues relating to gastropods and bivalve molluscs. Commercial fishers in the Northern Territory and Northern Territory Fisheries (who are facing similar issues) were also consulted in relation to black jewfish.

The results of consultation on issues relevant to black jewfish were mixed. Generally, all stakeholders recognised and/or were concerned about increasing fishing pressure on black jewfish. However, only the majority of recreational fishers were supportive of the proposals to introduce a prescribed commercial catch limit for commercial fishers; a reduction of the recreational fisher take and possession limit; and for fish to be possessed on a boat in whole form only. Commercial fishers believed the prescribed commercial catch limits were unrealistically low; that recreational fishers should be prohibited from taking black jewfish; and landing black jewfish in whole form would adversely affect their ability to store fish on board due to freezer space limitations during extended fishing trips.

Generally, all stakeholders consulted on gastropods and bivalve molluscs had recognised and/or were concerned about increasing pressure on gastropods and bivalve molluscs in the Moreton Bay Marine Park, and the majority of respondents across all sectors supported the proposed prohibition on the take of gastropods and bivalve molluscs in Moreton Bay.

The Office of Best Practice Regulation in the Queensland Productivity Commission was consulted on the proposals and determined that both are excluded from further regulatory impact analysis under the *Queensland Government Guide to Better Regulation* given that additional time taken to undertake further analysis may result in an unacceptable risk to the sustainability of the species.